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May 12, 2005

## **EX PARTE**

Marlene H. Dortch, Secretary Federal Communications Commission Office of the Secretary 445 12th Street SW Washington, DC 20554

Re: Ex Parte - IP-Enabled Services NPRM, WC Dkt. No. 04-36; Revision of the

Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency

Calling Systems, CC Dkt. No. 94-102

## Dear Ms. Dortch:

Yesterday, Tekedra Jefferson, Assistant General Counsel, America Online, Inc., Jim Tobin, Vice President and General Manager Advanced Voice Services, America Online, Inc., Steven Teplitz, Vice President and Associate General Counsel, Time Warner Inc., and the undersigned of Lampert & O'Connor P.C., met with Tom Navin, Bureau Chief, and Pam Arluk, Legal Counsel to the Bureau Chief, Julie Veach, Acting Division Chief, Competition Policy Division, and Christi Shewman, Attorney Advisor, Competition Policy Division, all of the Wireline Competition Bureau, to discuss issues relating to the above-captioned proceedings.

Specifically, America Online, Inc. ("AOL") stressed its strong commitment to public safety and to ensuring that its VoIP consumers have access to vital 911 and E911 emergency services. AOL has worked closely with its telephony partner to incorporate E911 (or 911, if the local PSAP only supports 911) in all of its retail VoIP plans and to enable such services by default. As such, AOL has undertaken to provision service only where E911/911 functionality is available and has devoted significant resources to ensure a high priority service architecture which "fast-tracks" 911 calls directly to the PSAP, bypassing AOL's switching/call handling infrastructure entirely. AOL has also committed to working with NENA to educate consumers about emergency services to increase awareness and diminish confusion. Through its efforts, AOL has been a guiding force in accelerating national deployment of E11 services for one of the largest IXCs, which will benefit consumers of other providers who purchase similar wholesale services. AOL underscored its strong concern that VoIP providers with inferior emergency services reduce consumer confidence in VoIP, negatively affecting AOL.

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AOL also explained that to continue to make improvements and enhancements to its VoIP emergency services, the FCC must be cognizant of current technological and other limitations and ensure that its rules create incentives for solutions. For example, AOL noted that there are currently limitations on the backup power capabilities for VoIP terminal adaptors and described its efforts to work with equipment vendors to develop alternative devices with independent power backup. Similarly, AOL emphasized that failures and disruptions of the underlying broadband infrastructure can affect the ability of consumers to connect to emergency services even when VoIP providers have taken all reasonable steps to ensure full E911 availability. AOL also noted that incumbent local telephone companies can sometimes pose obstacles to ensuring direct and reliable emergency services are available, especially concerning access to numbering resources and unreasonable pricing for needed network services. Finally, AOL pointed out that there currently exist problems with providing accurate and reliable location information for soft phones when they are moved from the subscriber's registered location, even where a VoIP provider seeks to offer a "non-portable" service such that the consumer is discouraged or prohibited from moving the VoIP service to a non-registered home location. As such, AOL asked that FCC action to require emergency service capability address these issues by creating exceptions in such circumstances.

In addition, AOL urged that the Commission adopt (or consider as part of a further rulemaking proceeding) a liability limitation similar to that adopted for wireless carriers in the Wireless Communications and Public Safety Act of 1999, 47 U.S.C. § 615a, such that state tort law would be preempted for VoIP providers complying with FCC requirements. AOL noted that such liability immunity would further the Congressional goal of ensuring that emerging technologies serve as a critical component of our nation's end-to-end communications infrastructure and substantially facilitate interstate commerce, 47 U.S.C. § 615 note (a)(3)(4).

In light of these concerns, AOL advocated that the FCC proceed quickly to address the vital public safety concerns implicated by the provision of VoIP services. To do so, the FCC should require that within a reasonable time period, and where supported by the relevant PSAPs, all VoIP providers shall provide to their subscribers an E911 service that provides accurate and reliable information regarding the fixed address registered by the subscriber at the time the VoIP service is initially provided or as updated by the subscriber. In the event the local PSAP does not support E911 service, the VoIP provider shall offer a reliable and accurate 911 functionality. The FCC's rule should additionally provide an exception to the extent there are power outages and/or broadband infrastructure disruptions that prevent the functioning of an otherwise compliant E911 capability.

Further, to assist VoIP providers in providing subscribers accurate information regarding the status of any such disruptions, including duration, scope and the need for subscribers to use alternate emergency service connection methods during such outages and disruptions, the FCC should ensure, at a minimum, that VoIP providers have access to currently required outage reporting information, *see* 47 C.F.R. § 63.100. AOL also suggested that the Commission could

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seek implementation status information regarding vendor equipment improvements, consumer information campaigns, and related technological and market developments to assist it as it moves forward in ensuring vital public safety services in the emerging VoIP area. Through the receipt of this updated and developing information, the Commission will be best able to ensure its requirements remain current and consistent with available developments. Finally, AOL stressed that the Commission should act quickly on VoIP numbering issues to promote needed access to critical numbering resources and proper coordination with NANPA, incumbent carriers and other related entities.

Pursuant to Section 1.1206(b) of the Commission's rules, copies of this notice are being filed electronically in the above-captioned proceedings for inclusion in the public record. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/

Donna N. Lampert

cc: Thomas Navin (via email)
Pam Arluk (via email)
Julie Veach (via email)
Christi Shewman (via email)